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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

12 JORGE SOLIS,

13 Plaintiff,

14 v.

15 NATIONAL DEFAULT SERVICING  
16 CORPORATION, et al.,

17 Defendants.

Case No. 17-CV-00449-LHK

**ORDER GRANTING MOTION TO  
DISMISS WITH PREJUDICE**

Re: Dkt. No. 3, 8

18 Before the Court is Defendants Portfolio Servicing, Inc. (“Portfolio”) and U.S. Bank  
19 National Association’s (“U.S. Bank”) (collectively, “Defendants”) unopposed motion to dismiss.  
20 Having considered the briefing on the motion, record in the case, and the relevant law, the Court  
21 hereby GRANTS Defendants’ motion to dismiss with prejudice.

22 **I. BACKGROUND**

23 **A. Factual Background**

24 The following facts are from Plaintiff’s complaint and Defendants’ unopposed motion to  
25 dismiss. On August 3, 2006, Plaintiff and Arturo Andrade Avalos (“Avalos”) obtained a loan from  
26 Washington Mutual Bank, FA in the amount of \$776,000.00. The loan was secured by a deed of  
27 trust encumbering the real property located at 37 Webb Road, Watsonville, California 95076

1 (“Webb Road property”).

2 On July 9, 2012, the beneficial interest under the Deed of Trust was assigned to U.S. Bank  
3 as trustee of the WaMu Mortgage Pass-Through Certificates Series 2006-AR13 Trust (“Trust”).  
4 On August 5, 2015, National Default Servicing Corporation was substituted as trustee under the  
5 Deed of Trust.

6 After Plaintiff defaulted on the loan, a Notice of Default and Election to Sell Under Deed  
7 of Trust (“Default Notice”) was recorded against the Webb Road property. Notices of Trustee’s  
8 Sale were recorded against Webb Road property on October 22, 2012, March 1, 2013, September  
9 9, 2013, January 8, 2014, August 12, 2015, July 27, 2016. Exhibits 5–10. Plaintiff claims that  
10 Defendants’ actions during the foreclosure violated various provisions of California and federal  
11 law, namely lack of standing to foreclose, fraud in the concealment, fraud in the inducement,  
12 intentional infliction of emotional distress, quiet title, slander of title, declaratory relief, violations  
13 of the Truth in Lending Act, violations of the Real Estate Settlement Procedures Act, and  
14 rescission. ECF No. 1-1.

15 **B. Procedural History**

16 On June 25, 2014, Plaintiff filed an earlier lawsuit against Portfolio, U.S. Bank, and JP  
17 Morgan Chase Bank, N.A. in Santa Cruz County Superior Court. Exhibit 11 (“2014 Action”). The  
18 2014 Action alleged violation of Cal. Civil Code § 2923.6(c), violation of Cal. Civil Code §  
19 2923.7, violation of Cal. Civil Code § 2924.10, violation of Cal. Civil Code § 2924(a)(6),  
20 violation of Cal. Business & Professions Code § 17200, negligent misrepresentation, breach of the  
21 implied covenant of good faith and fair dealing, and a demand for accounting. All counts stemmed  
22 from Defendants’ foreclosure on the Webb Road property. The Superior Court dismissed the first  
23 lawsuit due to Plaintiff’s failure to timely amend his complaint on April 2, 2015, and entered  
24 judgment in favor of Defendants on April 22, 2015. Exhibits 12–13.

25 On September 15, 2016, Plaintiff filed a second lawsuit against Defendants and Avalos in  
26 Santa Cruz County Superior Court. Exhibit 14 (“2016 Action”). The 2016 Action alleged that  
27 Avalos had improperly failed to participate in Plaintiff’s application for a loan modification. *Id.*

1 Plaintiff sought to quiet title and to enjoin Defendants from foreclosing on the property until  
2 Plaintiff secured title in his name alone. *Id.* On December 12, 2016, the Superior Court granted  
3 Defendants' motion for judgment on the pleadings, dismissed the complaint, and entered judgment  
4 in favor of Defendants. Exhibit 15–16.

5 Approximately two weeks after the 2016 Action was dismissed, Plaintiff filed the instant  
6 action in Santa Cruz county Superior Court. ECF No. 1-1. Defendants removed the case to this  
7 Court on January 24, 2017. ECF No. 1.

8 **II. LEGAL STANDARD**

9 **A. Rule 12(b)(6) Motion to Dismiss**

10 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include “a  
11 short and plain statement of the claim showing that the pleader is entitled to relief.” A complaint  
12 that fails to meet this standard may be dismissed pursuant to Rule 12(b)(6). Rule 8(a) requires a  
13 plaintiff to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*  
14 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff  
15 pleads factual content that allows the court to draw the reasonable inference that the defendant is  
16 liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility  
17 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a  
18 defendant has acted unlawfully.” *Id.* (internal quotation marks omitted). For purposes of ruling on  
19 a Rule 12(b)(6) motion, the Court “accept[s] factual allegations in the complaint as true and  
20 construe[s] the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St.*  
21 *Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

22 The Court, however, need not accept as true allegations contradicted by judicially  
23 noticeable facts, *see Schwarz v. United States*, 234 F.3d 428, 435 (9th Cir.2000), and it “may look  
24 beyond the plaintiff's complaint to matters of public record” without converting the Rule 12(b)(6)  
25 motion into a motion for summary judgment, *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th  
26 Cir.1995). Nor must the Court “assume the truth of legal conclusions merely because they are cast  
27 in the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir.2011) (per

1 curiam) (internal quotation marks omitted). Mere “conclusory allegations of law and unwarranted  
2 inferences are insufficient to defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183  
3 (9th Cir. 2004).

4 **B. Leave to Amend**

5 If the Court determines that the complaint should be dismissed, it must then decide  
6 whether to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave  
7 to amend “shall be freely given when justice so requires,” bearing in mind “the underlying purpose  
8 of Rule 15 to facilitate decisions on the merits, rather than on the pleadings or technicalities.”  
9 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (alterations and internal quotation  
10 marks omitted). When dismissing a complaint for failure to state a claim, “a district court should  
11 grant leave to amend even if no request to amend the pleading was made, unless it determines that  
12 the pleading could not possibly be cured by the allegation of other facts.” *Id.* at 1130 (internal  
13 quotation marks omitted). Accordingly, leave to amend generally shall be denied only if allowing  
14 amendment would unduly prejudice the opposing party, cause undue delay, or be futile, or if the  
15 moving party has acted in bad faith. *Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d 522, 532  
16 (9th Cir. 2008).

17 **C. Requests for Judicial Notice**

18 The Court generally may not look beyond the four corners of a complaint in ruling on a  
19 motion to dismiss, with the exception of documents incorporated into the complaint by reference,  
20 and any relevant matters subject to judicial notice. *See Swartz v. KPMG LLP*, 476 F.3d 756, 763  
21 (9th Cir. 2007); *Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001). Under the doctrine of  
22 incorporation by reference, the Court may consider on a motion to dismiss not only documents  
23 attached to the complaint, but also documents whose contents are alleged therein, provided the  
24 complaint “necessarily relies” on the documents or contents thereof, and the documents’  
25 authenticity and relevance are uncontested. *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038  
26 (9th Cir. 2010); *accord Lee*, 250 F.3d at 688–89. The purpose of this rule is to “prevent plaintiffs  
27 from surviving a Rule 12(b)(6) motion by deliberately omitting documents upon which their

1 claims are based.” *Swartz*, 476 F.3d at 763 (alterations and internal quotation marks omitted).

2 The Court also may take judicial notice of matters that are either (1) generally known  
3 within the trial court’s territorial jurisdiction or (2) capable of accurate and ready determination by  
4 resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). Proper  
5 subjects of judicial notice when ruling on a motion to dismiss include legislative history reports,  
6 *see Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012); court documents already in the  
7 public record and documents filed in other courts, *see Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*,  
8 442 F.3d 741, 746 n.6 (9th Cir. 2006); and publicly accessible websites, *see Daniels–Hall v. Nat’l  
9 Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010).

10 **III. DISCUSSION**

11 **A. Requests for Judicial Notice**

12 Along with their motion to dismiss, Defendants request judicial notice of the following 17  
13 documents:

- 14 • Exhibit 1: Deed of Trust, recorded in the Official Records of Santa Cruz County,  
15 California, on August 9, 2006, as instrument number 2006-0046515.
- 16 • Exhibit 2: Corporate Assignment of Deed of Trust, recorded in the Official  
17 Records of Santa Cruz County, California, on July 9, 2012, as instrument number  
18 2012-0032213.
- 19 • Exhibit 3: Substitution of Trustee, recorded in the Official Records of Santa  
20 Cruz County, California, on August 5, 2015, as instrument number 2015-  
21 0032065.
- 22 • Exhibit 4: Notice of Default and Election to Sell Under Deed of Trust, recorded  
23 in the Official Records of Santa Cruz County, California, on July 10, 2012, as  
24 instrument number 2012-0032359.
- 25 • Exhibit 5: Notice of Trustee’s Sale, recorded in the Official Records of Santa  
26 Cruz County, California, on October 22, 2012, as instrument number 2012-  
27 0051574.

- Exhibit 6: Notice of Trustee's Sale, recorded in the Official Records of Santa Cruz County, California, on March 1, 2013, as instrument number 2013-0010860.
- Exhibit 7: Notice of Trustee's Sale, recorded in the Official Records of Santa Cruz County, California, on September 9, 2013, as instrument number 2013-0044698.
- Exhibit 8: Notice of Trustee's Sale, recorded in the Official Records of Santa Cruz County, California, on January 8, 2014, as instrument number 2014-000000839.
- Exhibit 9: Notice of Trustee's Sale, recorded in the Official Records of Santa Cruz County, California, on August 8, 2015, as instrument number 2015-0032936.
- Exhibit 10: Notice of Trustee's Sale, recorded in the Official Records of Santa Cruz County, California, on July 27, 2016, as instrument number 2016-0027185.
- Exhibit 11: Complaint in *Jorge Solis v. J.P. Morgan Chase Bank, N.A., et al.*, Santa Cruz County Superior Court Case Number CV179492.
- Exhibit 12: Order of Dismissal in *Jorge Solis v. J.P. Morgan Chase Bank, N.A., et al.*, Santa Cruz County Superior Court Case Number CV179492.
- Exhibit 13: Judgment of Dismissal in *Jorge Solis v. J.P. Morgan Chase Bank, N.A., et al.*, Santa Cruz County Superior Court Case Number CV179492.
- Exhibit 14: Verified Complaint in *Jorge Solis v. Arturo A. Avalos, et al.*, Santa Cruz County Superior Court Case Number CV182442.
- Exhibit 15: Order Granting Motion for Judgment on the Pleadings in *Jorge Solis v. Arturo A. Avalos, et al.*, Santa Cruz County Superior Court Case Number CV182442.
- Exhibit 16: Judgment Following Granting Motion for Judgment on the Pleadings in *Jorge Solis v. Arturo A. Avalos, et al.*, Santa Cruz County Superior Court Case Number CV182442.

1           • Exhibit 17: Excerpt from Pooling and Servicing Agreement, available at  
2           [https://www.sec.gov/Archives/edgar/data/1374625/000127727706000724/exh41t08kpsawamu2006\\_ar13.htm](https://www.sec.gov/Archives/edgar/data/1374625/000127727706000724/exh41t08kpsawamu2006_ar13.htm).

4           Each of these documents is a matter of public record “not subject to reasonable dispute [and]  
5           capable of accurate and ready determination by resort to sources whose accuracy cannot  
6           reasonably be questioned.” Fed. R. Evid. 201. Additionally, many of the documents are public  
7           documents filed in other courts. *See Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746  
8           n.6 (9th Cir. 2006) (holding that judicial notice of court documents is proper). However, to the  
9           extent that any of the above documents contain facts that are subject to reasonable dispute, such  
10          as the allegations in Plaintiff’s Verified Complaint (Exhibit 14), the Court does not take judicial  
11          notice of those facts. *See Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001) (“A court may  
12          take judicial notice of matters of public record . . . But a court may not take judicial notice of a  
13          fact that is subject to reasonable dispute.”) (internal quotation marks omitted), *overruled on other*  
14          *grounds by Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002). Accordingly, the  
15          Court GRANTS Defendant’s request for judicial notice. *See Lee v. City of Los Angeles*, 250 F.3d  
16          668, 688 (9th Cir. 2001) (noting that a court may take judicial notice of matters of public record  
17          in ruling on a motion to dismiss); *Julio v. Wells Fargo Bank*, , 2011 WL 11048327, at \*1 (N.D.  
18          Cal. July 21, 2011) (taking judicial notice of similar foreclosure documents); *Sepehry-Fard v.*  
19          *Bank of N.Y. Mellon, N.A.*, 2012 WL 4717870, at \*1 (N.D. Cal. Oct. 2, 2012) (same).

20           **B. Motion to Dismiss**

21           Defendants argue that dismissal is proper under Federal Rule of Civil Procedure (“Rule”)  
22          12(b)(6) for several reasons. First, Defendants claim that all of Plaintiff’s claims are barred by the  
23          doctrine of res judicata. Second, Defendants argue that Plaintiff’s complaint fails to state a claim  
24          for lack of standing to foreclose and for wrongful foreclosure. Third, Defendants argue that  
25          Plaintiff has not pled Plaintiff’s fraud-based claims with particularity. Fourth, Defendants argue  
26          that Plaintiff’s complaint fails to state a claim for intentional infliction of emotional distress. Fifth,  
27          Defendants argue that Plaintiff’s complaint fails to state a claim for slander of title. Sixth,

Defendants argue that Plaintiff's complaint fails to state a claim for quiet title. Seventh, Defendants argue that Plaintiff is not entitled to declaratory relief. Eighth, Defendants argue that Plaintiff's complaint fails to state a claim for violation of the Truth in Lending Act. Ninth, Defendants argue that Plaintiff's complaint fails to state a claim for violation of the Real Estate Settlement Procedures Act. Tenth, Defendants argue that Plaintiff's complaint fails to state a claim for rescission. Plaintiff has not opposed Defendants' motion to dismiss on any grounds. The Court finds that all of Plaintiff's claims are barred under the doctrine of res judicata, and therefore the Court need not reach Defendants' other arguments for dismissal.

Res judicata is a doctrine that “precludes the parties or their privies from relitigating issues that were or could have been raised” in a prior action that resulted in a final judgment on the merits. *Allen v. McCurry*, 449 U.S. 90, 94 (1980). “Claim preclusion is a broad doctrine that bars bringing claims that were previously litigated as well as some claims that were never before adjudicated.” *Clements v. Airport Auth. of Washoe Cnty.*, 69 F.3d 321, 327 (9th Cir. 1995).

The Full Faith and Credit Clause of the U.S. Constitution and 28 U.S.C. § 1738 require federal courts to give full faith and credit to state court judgments. *Holcombe v. Hosmer*, 477 F.3d 1094, 1097 (9th Cir. 2007); see U.S. Const. art. IV, § 1; 28 U.S.C. § 1738. To determine the preclusive effect of a state court judgment, federal courts apply state law. See *Kay v. City of Rancho Palos Verdes*, 504 F.3d 803, 808 (9th Cir. 2007) (“[A] federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.”) (quoting *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984))). Under California law, claim preclusion applies when (1) the party to be precluded was a party or in privity with a party to the previous adjudication; (2) the second lawsuit involves the same “cause of action” as the first; and (3) there was a final judgment on the merits in the first lawsuit. *San Diego Police Officers’ Ass’n v. San Diego City Emps.’ Ret. Sys.*, 568 F.3d 725, 734 (9th Cir. 2009). The Court considers these three factors in turn.

## 1. Identity of Parties

Under California claim preclusion rules, the only identity of parties required is the identity

1 of the party against whom preclusion is sought. *See San Diego Police Officers' Ass'n.*, 568 F.3d at  
2 734. Here, Defendants seek to preclude Plaintiff from asserting his claims in federal courts.  
3 Plaintiff was unquestionably a party to both of the previous state court actions. Exhibits 11 & 14.  
4 Therefore, the first requirement of claim preclusion is met.

5 **2. Same Cause of Action**

6 California law defines a "cause of action" for purposes of res judicata by employing a  
7 "primary rights" theory." *Maldonado v. Harris*, 370 F.3d 945, 952 (9th Cir. 2004). Under the  
8 primary rights theory, "a cause of action is (1) a primary right possessed by the plaintiff, (2) a  
9 corresponding primary duty devolving upon the defendant, and (3) a harm done by the defendant  
10 which consists in a breach of such primary right and duty." *City of Martinez v. Texaco Trading &*  
11 *Transp., Inc.*, 353 F.3d 758, 762 (9th Cir. 2003) (citing *Citizens for Open Access to Sand and Tide,*  
12 *Inc. v. Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1065 (1998)). The key to the analysis is "the harm  
13 suffered." *San Diego Police Officers' Ass'n*, 568 F.3d at 734 (quoting *Agarwal v. Johnson*, 25 Cal.  
14 3d 932 (1970)). "[I]f two actions involve the same injury to the plaintiff and the same wrong by  
15 the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads  
16 different theories of recovery, seeks different forms of relief and/or adds new facts supporting  
17 recovery." *Id.* (quoting *Eichman v. Fotomat Corp.*, 147 Cal. App. 3d 1170, 1174 (1983)); *see also*  
18 *Kay*, 504 F.3d at 809 ("California's primary rights theory does not mean that different causes of  
19 action are involved just because relief may be obtained under either of two legal theories."  
20 (internal quotation marks, citations, and alterations omitted)). In other words, so long as the same  
21 primary right is at issue, res judicata "prevents litigation of all grounds for, or defenses to,  
22 recovery that were previously available to the parties, regardless of whether they were asserted or  
23 determined in the prior proceeding." *Kay*, 504 F.3d at 809 (internal quotation marks and citations  
24 omitted).

25 Plaintiff's 2014 Action in state court alleged violation of Cal. Civil Code § 2923.6(c),  
26 violation of Cal. Civil Code § 2923.7, violation of Cal. Civil Code § 2924.10, violation of Cal.  
27 Civil Code § 2924(a)(6), violation of Cal. Business & Professions Code § 17200, negligent

1 misrepresentation, breach of the implied covenant of good faith and fair dealing, and a demand for  
2 accounting. All of Plaintiff's claims stemmed from Defendants' foreclosure on the Webb Road  
3 property. *See Exhibit 11.*

4 Plaintiff's 2016 action sought to quiet title and to enjoin Defendants from foreclosing on  
5 the Webb Road property until Plaintiff was confirmed as the sole titleholder. Exhibit 14. Although  
6 Defendants rely on both the 2014 Action and the 2016 Action to justify the application of res  
7 judicata, the Court finds that the 2014 Action alone is sufficient to warrant application of res  
8 judicata, and therefore the Court need not consider the res judicata effect of the 2016 Action.

9 Plaintiff now seeks recovery under different causes of action than those alleged in the 2014  
10 Action. Specifically, the instant case Plaintiff seeks relief based on lack of standing to foreclose,  
11 fraud in the concealment, fraud in the inducement, intentional infliction of emotional distress,  
12 quiet title, slander of title, declaratory relief, violations of the Truth in Lending Act, violations of  
13 the Real Estate Settlement Procedures Act, and rescission. ECF No. 1-1. Although the causes of  
14 action are different, "the harm suffered" in both the 2014 Action and the instant case—the  
15 allegedly wrongful foreclosure—is identical. *San Diego Police Officers' Ass'n*, 568 F.3d at 734.  
16 Specifically, "in both actions plaintiff alleges, due to various procedural defects, that defendants  
17 lacked the legal right to foreclose upon [his] property. Moreover, in both actions plaintiff's claims  
18 involved the same property and the same allegedly defective foreclosure process." *Lee v. JP*  
19 *Morgan Chase Bank, N.A.*, 2015 WL 5554006, at \*4 (C.D. Cal. Sept. 21, 2015).

20 Therefore, all of Plaintiff's claims in the 2014 Action and the instant case seek to vindicate  
21 the same primary right, "the right to be free from unlawful foreclosure." *Mendaros v. JPMorgan*  
22 *Chase Bank, N.A.*, 2014 WL 3373447, at \*4 (N.D. Cal. Jul. 9, 2014); *see also, e.g., Thomas v.*  
23 *Bank of America, N.A.*, 2013 WL 3992999, at \*6 (S.D. Cal. Aug. 5, 2013) ("The primary right is  
24 Plaintiff's property right to the subject property. The harm for which Plaintiff sought relief in state  
25 court is the same harm for which he now seeks to hold defendants liable which is the foreclosure  
26 of his property."); *Thomas v. Bank of America, N.A.*, 2013 WL 3992999, \*6 (S.D. Cal. 2013)  
27 ("The primary right is Plaintiff's property right to the subject property. The harm for which  
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1 Plaintiff sought relief in state court is the same harm for which he now seeks to hold defendants  
2 liable which is the foreclosure of his property. The alleged wrong by Defendants is that  
3 Defendants wrongfully foreclosed on his property.”).

4 “California, as most states, recognizes that the doctrine of res judicata will bar not only  
5 those claims actually litigated in a prior proceeding, but also claims that could have been  
6 litigated.” *Palomar Mobilehome Park Ass’n v. City of San Marcos*, 989 F.2d 362, 364 (9th Cir.  
7 1993). In other words, Plaintiff cannot escape claim preclusion simply by now “plead[ing]  
8 different theories of recovery” or “seek[ing] different forms of relief.” *San Diego Police Officers’  
9 Ass’n*, 568 F.3d at 734. Thus, although the remedies sought in the instant case are different from  
10 those sought in the 2014 Action, this does not affect the Court’s conclusion that the instant case  
11 and the 2014 Action involved the same primary right.

12 Finally, Plaintiff does not contest that the instant case involves the same primary right and  
13 therefore the same “cause of action” that was at issue in the 2014 Action. *Maldonado*, 370 F.3d at  
14 952. Therefore, the Court concludes that this second, federal lawsuit involves the same “cause of  
15 action” as the 2014 Action, and thus the second requirement for claim preclusion is satisfied.

16 **3. Final Judgment on the Merits**

17 In the 2014 Action, the Superior Court granted Defendants’ motion for judgment on the  
18 pleadings with leave to amend. Exhibit 12. After Plaintiff failed to amend the complaint, the Court  
19 ordered that the action be dismissed with prejudice as to the Defendants and entered judgment in  
20 favor of Defendants on April 2, 2015. *Id.* Under California law, the state court judgment in favor  
21 of City Defendants was a judgment on the merits for res judicata purposes. *See Chunhye Kim Lee  
22 v. Arizona Bd. of Regents*, 633 F. App’x 453 (9th Cir. 2016) (affirming finding of claim preclusion  
23 based on earlier state court grant of motion for judgment on the pleadings). This judgment became  
24 final after the 60-day time limit for appeal elapsed. *See Kay*, 504 F.3d at 808 (“[T]he finality  
25 required to invoke the preclusive bar of res judicata is not achieved until an appeal from the trial  
26 court judgment has been exhausted or the time to appeal has expired.”). Additionally, Plaintiff  
27 does not contest that the Superior Court rendered a final judgment on the merits. Therefore, the

1 third requirement for res judicata is met as well.

2 For the reasons discussed above, all three requirement for res judicata are met. Therefore,  
3 the Court GRANTS Defendants' motion to dismiss Plaintiff's complaint in its entirety on the  
4 grounds of res judicata.

5 **C. Leave to Amend**

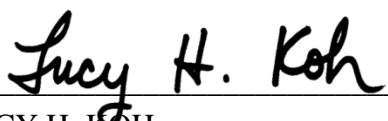
6 Although Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend  
7 "shall be freely given when justice so requires," it is well-established that leave to amend may be  
8 denied if the moving party has acted in bad faith, or if allowing amendment would unduly  
9 prejudice the opposing party, cause undue delay, or be futile. *Leadsinger, Inc. v. BMG Music*  
10 *Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). Amendment would be futile if "the pleading could not  
11 possibly be cured by the allegation of other facts." *Lopez*, 203 F.3d at 1130. Because Plaintiff's  
12 claims are barred by res judicata, the Court finds that amendment would be futile. Plaintiff has  
13 already filed three lawsuits regarding the same primary right. Allowing yet another complaint  
14 challenging the same home foreclosure would unduly prejudice the Defendants. Accordingly, the  
15 Court dismisses Plaintiff's claims with prejudice.

16 **IV. CONCLUSION**

17 For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss with  
18 prejudice.

19 **IT IS SO ORDERED.**

20 Dated: May 3, 2017

21   
22 LUCY H. KOH  
23 United States District Judge

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